Legal Department.

Section 27(1)(b) of the Bombay Primary Education Act, 1923, which has been repealed empowered Government to make rules regulating the maximum and minimum pay, the grant of pension or provision of provident funds, the grant of leave and other conditions of service of, to or for the teaching staff employed by a local authority. Under this authority old rule 68B was made. Under the scheme of the Bombay Primary Education Act, 1947, the rules are to be made under section 63(2)(f) only in respect of provident funds, gratuities and pensions for the teaching staff. The rates of the pay and allowances and terms of employment in respect of such staff are to be fixed by Government from time to time under section 20(3). For requiring the teachers under training to enter into an agreement, which will be a matter governing their term of employment, no provision can be made in the rules. For the purpose in view suitable executive instructions from Government would be sufficient.

Sd/-

Additional Secretary to Government.

U.R. to E.D., NC. 6575, dated the 13th May 1950.

N.V.D.
20/6
4c.

Legal Department.

The words of section 24 of the Bombay Primary Education Act, 1947 are wide enough to empower the Administrative Officer to require a member of the staff to retire from service as a measure of disciplinary action. Rule 63(2) can, therefore, be amended as proposed. A revised draft notification is sent herewith. It is not clear what Education Department means by the draft amendment III at page 6 ante which amends the Note below the proviso to rule 63(2)(b). Education Department should verify whether the amendment suggested to the Note in the revised notification is sufficient and carries out its intention.

Sd/-

Additional Secretary to Government,

N.P. to W.D. No. 8102, dated the 15th June 1950.

N.V.D.
20/6
4c.

Legal Department.

Revised draft notification making the necessary amendment in rules 108, 110, 111 and 128 is sent herewith.

2. Attention is invited to Remembrancer of Legal Affairs opinion No. Confl. 129 dated the 24th February 1949. As pointed observed in that opinion, Government would be justified in refusing grant-in-aid to educational institution which decline to employ persons of other religions or communities. The Department should consider whether a specific provision to this effect should also be made in the Bombay Primary Education Rules.

Sd/-

Additional Secretary to Government.

U.R. to E.D.No. 12187 dated the 25th August 1950.

M.V.D.
21/6
4c.

19 50 **K** **File No.** Pri-Edu-Bom.II
50 (R)

Legal dept

B BRANCH

Subject:— Rules under the Bombay Primary Education Act, 1947.

File No. Primary Educ.-Bom.II/1950.(R)

Gen. 194 e.

272-B

Legal Department.

In place of the draft at pages 29 to 42 ante, a revised draft notification is sent herewith.

Revised draft amendments Nos. 10(2) and 22. It is not necessary to reproduce the whole rules; only specific amendments would serve the purpose in view.

Revised draft amendment No. 12. It contains a consequential amendment which was left out.

Revised draft amendment No. 17. The Assistant Deputy Educational Inspector is an officer of Government appointed under section 48. Sub-section(2) of that section empowers and Government to make rules prescribing his powers and duties. Under those powers it would be possible to entrust to him the duties formerly performed by the Attendance Officer. Under sub-section(2) of sections 35 and 36 the Assistant Deputy Educational Inspector can be authorised by the Administrative Officer to lodge complaints for prosecution under those sections. But the power to issue attendance order cannot be delegated to the Assistant Deputy Educational Inspector, as under section34(2) such powers can be delegated only to the officers of the school board. Rule 97 has, therefore, been suitably revised.

Sd/-

Additional Secretary to Government.

U.O. to E.D.No. 18183, dated 23rd December 195

N.V.D.
21/6
40.

Legal Department.

In view of Article 15 of the Constitution of India no seats can be reserved on the School Boards for minorities and backward communities. It is true that Article 46 directs the State to promote with special care the educational and economic interest of the weaker sections of the people but that Article cannot be construed as directing the State to reserve seats for the weaker sections on any body. Where the intention was that seats should be reserved, special provision for such reservation had been made in the case of Scheduled Castes and Scheduled Tribes although these Castes and Tribes have been referred to in Article 46. See Articles 330 and 332. Sub-section(6) of section4 of the Bombay Primary Education Act, 1947 in so far as it provides for reservation of seats for the minorities and backward communities is void under Article 13 as being inconsistent with the provisions of Article 15 and is, therefore, of no effect. It will, therefore, be necessary to take steps for the amendment of the Primary Education Act, 1947 for deleting provisions regarding reservation of seats for minorities and backward communities and in the meantime reserve no seats on the School Boards for the minorities and backward communities.

Sd/-

Additional Secretary to Government.

U.R.to T.D.No. 9505, dated the 7th July 1950.

N.V.D.
21/6
4c.